

UNITED STATES BANKRUPTCY COURT  
EASTERN DIVISION, DISTRICT OF MASSACHUSETTS

In re		Docket No.: 06-14772-JNF
Donna M. DiMare		Chapter 13
	Debtors	
Donna M. DiMare	Plaintiff	ADVERSARY PROCEEDING NO.
v.		
RealtyTrac, Inc.		
	Defendant	

ADVERSARY COMPLAINT

I. INTRODUCTION

1. By this complaint, Plaintiff seeks actual damages, punitive damages, and attorney's fees and costs, resulting from negligence and infliction of emotional distress, together with related causes of action.

II. PARTIES

2. Debtor-Plaintiff Donna M. DiMare (hereinafter "Debtor" or "Plaintiff") is a homeowner residing at 19 Alcine Lane, Burlington, MA (hereinafter the "property").

3. She is also a Debtor in this Court pursuant to a Petition filed under Chapter 13 of the United States Bankruptcy Code on December 15, 2006.

4. Upon information and belief, defendant RealtyTrac, Inc. (hereinafter "RealtyTrac"), is a Nevada Corporation with principal offices at One Venture Plaza, Suite 300; Irvine, CA.

III. JURISDICTION and VENUE

5. This matter is a core proceeding. The court has jurisdiction under 11 U.S.C. § 1343 and 28 U.S.C. § 157, as amended.

6. The Court may assert personal jurisdiction over the Defendant as it has engaged in continual and systematic business dealings within the Commonwealth of Massachusetts, as stated hereinafter.

7. Venue is proper in this Court based on the underlying bankruptcy case.

8. An adversary proceeding is required by Fed.R.Bankr.P. 7001 because the plaintiff is seeking an injunction and to recover money, and because the defendant is not otherwise a party to the bankruptcy case.

IV. STATEMENT OF FACTS

9. DiMare is a high-school graduate, but has no formal education after that. She is unsophisticated in financial matters.

10. DiMare was diagnosed with fibromyalgia approximately ten years ago. Fibromyalgia is a chronic condition characterized by widespread pain in the muscles, ligaments and tendons, as well as fatigue and multiple tender points — places on the body where slight pressure causes pain. Fibromyalgia is more common in women than in men. Previously, fibromyalgia was known by other names such as fibrositis, chronic muscle pain syndrome, psychogenic rheumatism and tension myalgias. Although the intensity of the symptoms may vary, they generally never disappear completely. Fibromyalgia is not progressive or life-threatening, but is disabling. It is made worse by stress and lack of sleep.

11. DiMare's doctor has determined that she is fully disabled by her condition. As a result of her disability, DiMare cannot work. Notwithstanding her disability, she does not qualify for Social Security Disability Income because she was not employed for a sufficient period of time.

12. DiMare filed the present bankruptcy case in order to avoid foreclosure of a mortgage encumbering title to her home, held (upon information and belief) by Option One Mortgage Corporation (hereinafter "OOMC").

13. In the weeks and days prior to the date of this complaint, DiMare has been subjected to people coming to her home, entering onto the property without her permission, and telling her that her home was being advertised for foreclosure sale. In addition, she has received letters and postcards from people offering to buy the home and/or help her refinance. These intrusions into her privacy are unwanted, inappropriate and the cause of an outrageous and unacceptable amount of mental and physical distress for DiMare.

14. Upon investigation, DiMare learned that on or about July 3, 2007, an internet site called RealtyTrac.com began listing DiMare's property as one which is subject to foreclosure sale. *See attached.*

15. According to the internet site, RealtyTrac.com is owned by RealtyTrac, Inc., the defendant herein. It "is the leading online marketplace for foreclosure properties, and one of the fastest-growing real estate sites on the Internet. RealtyTrac offers the largest national database of pre-foreclosure, foreclosure, For Sale By Owner and new home construction properties, with more than 550,000 properties across the country. RealtyTrac hosts 2 million unique monthly visitors, and provides the comprehensive property data, productivity tools, and extensive professional resources that home seekers, investors and realtors need to locate, evaluate and buy real estate properties at below market value."

16. Information disseminated by RealtyTrac appears to be widely quoted in the media and on the internet. For example, ABC News posted an article quoting James Saccacio, CEO of RealtyTrac, on June 12, 2007. *See* <http://tinyurl.com/2otab2>.

17. RealtyTrac has been criticized, however, and questions have been raised concerning the accuracy of its information. *See* <http://www.cnn.com/id/19206921>.
18. In Oregon, the Oregon Herald newspaper conducted an investigation into RealtyTrac's activities and was sharply critical of its business methods. *See* <http://tinyurl.com/24ky9a>
19. RealtyTrac appears to be a "membership" site; that is, RealtyTrac offers anyone with access to the internet a free 7-day "membership", following which members must pay a monthly membership fee to continue to access the information available from the website.
20. While RealtyTrac does not appear to have any offices or personnel in Massachusetts, it nonetheless purposefully and actively solicits members from Massachusetts. It also offers Massachusetts residents an opportunity to become members of its networks as an agent, partner, affiliate, or lender. Furthermore, it seeks advertising revenue from residents in Massachusetts.
21. Upon information and belief, it also purposefully and actively seeks information concerning real property in Massachusetts which is involved in the foreclosure process by hiring individuals and companies to obtain information from filings in the courts of the Commonwealth of Massachusetts, such as proceedings in the Land Court under the federal Servicemembers Civil Relief Act. RealtyTrac then publishes that information on its website and also advertises its services on other websites, such as Yahoo.com.
22. Upon information and belief, the detailed information, including the name of the owner and the full street address of the property, is then posted to the website and made available to members. However, non-members have access only to generalized information concerning properties, without the name of the owner and the full street address of the property.
23. Upon information and belief, RealtyTrac relies on its information sources and makes no effort independently to verify the accuracy of the information, but merely indicates on the website the date the information was added to the website.
24. Upon information and belief, RealtyTrac also makes no effort to determine whether the owner of the real property has filed a bankruptcy case.

COUNT I Infliction of Emotional Distress

25. Plaintiff adopts and re-alleges all paragraphs above as if fully restated herein.
26. Through her bankruptcy case, DiMare is attempting to retain her home so that she and her family may have a place to live.
27. As is set forth in the complaint in adversary proceeding number 01-01338, pending in this court, DiMare believes she was a victim of predatory lending.
28. Due to her illness, as more particularly described in paragraphs 10 and 11 above, the stress of having to file a bankruptcy case, alone, has resulted in an unusual degree of emotional and physical distress for DiMare. The actions of RealtyTrac as set forth herein and the resulting intrusions by third parties have exacerbated the distress to a degree that is outrageous and should

not be tolerated in a civilized society. But for RealtyTrac's actions, the third parties would not have intruded and DiMare would not have suffered the emotional distress.

29. DiMare has been damaged thereby.

## COUNT II Negligence

30. Plaintiff adopts and re-alleges all paragraphs above as if fully restated herein.

31. RealtyTrac has a duty to DiMare, and to others about whom information is published on its website, to ensure that the information is accurate and to avoid publishing information that is false or misleading, and/or could result in damage to DiMare.

32. In Massachusetts, the commencement of a Servicemembers Civil Relief Act ("SCRA") proceeding is an act which commences a formal mortgage foreclosure proceeding. No other judicial action is required.

33. By filing a bankruptcy case, DiMare obtained an automatic stay of any foreclosure activity, including a SCRA proceeding.

34. By failing to determine whether DiMare, and others like her, have filed a bankruptcy case, RealtyTrac failed to verify that the information it was publishing about DiMare was accurate. In fact, the information was not accurate because the foreclosure had been stayed by the filing of the bankruptcy case, and the mortgagee could not legally continue foreclosure, nor could any of RealtyTrac's members purchase the home.

35. RealtyTrac intentionally fails to obtain information concerning bankruptcy filings.

36. RealtyTrac was negligent and failed to perform its duty.

37. DiMare has been damaged thereby.

## COUNT III Injunction

38. Plaintiff adopts and re-alleges all paragraphs above as if fully restated herein.

39. If RealtyTrac is not enjoined from failing to determine whether a property owner has filed a bankruptcy case, it is likely that future violations of the automatic stay will occur, resulting in damage to other persons who file bankruptcy cases.

40. DiMare is entitled to an injunction preventing RealtyTrac from advertising properties for sale at foreclosure until RealtyTrac determines whether the property owner has filed a bankruptcy petition, and requiring it to investigate regularly whether the owner of a listed property has filed.

## PRAYERS FOR RELIEF

41. Plaintiff adopts and re-alleges all paragraphs above as if fully restated herein.

42. Plaintiff demands judgment as set out below from the Defendant:

a. Compensatory and actual damages in an amount to be awarded after trial;

- b. Punitive damages sufficient to deter future violations of this nature;
- c. A permanent injunction as requested above;
- d. Costs of this proceeding;
- e. Reasonable Attorneys fees;
- f. Such other relief as to the Court seems meet and just.

September 7, 2007

Respectfully submitted,  
Donna DiMare  
By her attorney,

/s/ David G. Baker  
David G. Baker, Esq.  
105 Union Wharf  
Boston, MA 02109  
617-340-3680  
BBO# 634889

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1 Property Information

Save Listing to My RealtyTrac

Bird's Eye

**Property ID** 13121939  
**Address** 19 Alcine Ln  
 Burlington, MA 01803  
**County** Middlesex  
[Interactive Map](#)  
**Type** Single family residence (RSFR)  
**Beds** 4  
**Baths** 2

**Square Feet** 1652  
**Lot Size** 20000  
**Parcel Number** 000008 - 000000 - 000052  
**Doc Number** 2006-  
**Year Built** 1960  
**Bldg. Price Sq. Ft.** N/A  
**Lot Price Sq. Ft.** N/A



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Neighborhood Information

**Estimated Property Value Range**

\$384,000 - \$454,000

**Estimated Property Market Value**

\$396,000

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4 Foreclosure Information

**Default Amt** N/A  
**Status** Auction  
**Recorded** 12/18/2006  
**Entered On** 7/3/2007  
**Last Payment** N/A  
**Opening Bid** \$210,000  
**Sale Date** 1/2/2007 (4:00PM)  
**Sale Location** N/A  
**Referee** N/A

5 Foreclosing Loan Information

**Loan Balance** \$210,000  
**Loan Date** N/A  
**Loan Doc #**  
**Trans Date**  
**Trans Value** \$185,000  
**First Loan Amount** \$210,000  
**Judgment Amount** N/A

6 Tax Assessment Information

**Land Total** \$236,000  
**Improvements** \$155,200  
**Assessed Total** \$391,200



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7 Contact Information

**Owner(s)** Donna M Dimare  
**Name**  
**Address** 19 Alcine Ln, Burlington, MA 01803  
[Contact Owner](#)  
**Attorney** Zamzam Syed - [Search for Attorney on Google](#)  
**Reference #**  
**Address** N/A  
**Phone** (617) 558-0500  
**Lender** Option One Mortgage Corp. - [Search for lender on Google](#)  
**Address** 3 Ada  
 Irvine, CA 92619  
**Phone** N/A

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